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# Chapters of the School Law of California

## II. The School District.

**N***ATURE of the school district.*—The school district, in the language of the California Supreme Court, is a quasi municipal corporation, or a corporation of quasi municipal character.<sup>1</sup> The more common form of expression is to say that school districts are quasi corporations,<sup>2</sup> and of course of a public character. The term, whether quasi corporation or quasi municipal corporation, is intended to distinguish such corporations as school districts, road districts,<sup>3</sup> townships,<sup>4</sup> irrigation districts,<sup>5</sup> reclamation districts,<sup>6</sup> and counties,<sup>7</sup> on the one hand, from private corporations, and on the other hand from municipal corporations proper, such as cities and towns.

In an early California case Sawyer, C. J., thus distinguishes the several leading classes of corporations:

“So, also, there are several classes of corporations, such as public municipal corporations, the leading object of which is

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<sup>1</sup> Estate of Bulmer (1881), 59 Cal. 131; Hughes v. Ewing (1892), 93 Cal. 414, 28 Pac. 1067; Kennedy v. Miller (1893), 97 Cal. 429, 32 Pac. 558; In re Wetmore (1893), 99 Cal. 146, 33 Pac. 769; Board of Education v. Board of Trustees (1900), 129 Cal. 599, 62 Pac. 173; Mitchell v. Board of Education (1902), 137 Cal. 372, 70 Pac. 180; Hancock v. Board of Education (1903), 140 Cal. 554, 74 Pac. 44; Los Angeles City School District v. Longden (1905), 148 Cal. 380, 83 Pac. 246; Pass School District v. Hollywood City School District (1909), 156 Cal. 416, 105 Pac. 122.

<sup>2</sup> A. H. Andrews Co. v. School District (1910), 95 Ark. 26, 128 S. W. 361; Freeland v. Stillman (1892), 49 Kan. 197, 30 Pac. 235; School District v. Thompson (1861), 5 Minn. 280; Harris v. School District (1853), 28 N. H. 58; State v. Troth (1871), 34 N. J. L. 377; Briegel v. City of Philadelphia (1890), 135 Pa. St. 451, 19 Atl. 1038; Montpelier Bank v. School District (1902), 115 Wis. 622, 92 N. W. 439.

<sup>3</sup> In County of San Bernardino v. S. P. R. R. Co. (1902), 137 Cal. 659, 70 Pac. 782, it was held that a road district is not a political entity; that it can neither sue nor be sued; that its affairs are entirely managed by the county officials; that its taxes are levied, collected, and expended by the county; and that its affairs are county affairs. It was in these particulars distinguished from a school district.

<sup>4</sup> Wilson v. Ulysses Township (1904), 72 Neb. 807, 101 N. W. 986.

<sup>5</sup> Fallbrook Irr. Dist. v. Abila (1895), 106 Cal. 355, 39 Pac. 794.

<sup>6</sup> Reclamation Dist. No. 70 v. Sherman (1909), 11 Cal. App. 399, 105 Pac. 277.

<sup>7</sup> People v. Sacramento County (1873), 45 Cal. 692.

to promote the public interest; corporations technically private, but yet of a quasi public character, having in view some great public enterprise, in which the public interests are directly involved to such an extent as to justify conferring upon them important governmental powers, such as an exercise of the right of eminent domain. Of this class are railroad, turnpike, and canal companies; and corporations strictly private, the direct object of which is to promote private interests, and in which the public has no concern, except the indirect benefits resulting from the promotion of trade, and the development of the general resources of the country. They derive nothing from the government, except the right to be a corporation, and to exercise the powers granted. In all other respects, to the extent of their powers, they stand upon the footing of natural persons, having such property as they may legally acquire, and holding and using it ultimately for the exclusive benefit of the stockholders. In this last class, the stockholders and those dealing with the corporation, are the only parties directly and immediately interested in their acts, so long as the corporation confines itself within the general scope of its powers. The rights of the corporation, the corporators, and of strangers dealing with the corporation, may, in some respects, vary according to the circumstances surrounding a given transaction."<sup>8</sup>

All corporations that are intended as agencies in the administration of the state government are public corporations as distinguished from private corporations. Thus cities, counties, and school districts are public corporations.<sup>9</sup> So are reclamation districts,<sup>10</sup> irrigation districts,<sup>11</sup> and sanitary districts,<sup>12</sup> all public corporations, in the sense of being invested with a certain degree of corporate power for the performance of their public functions. But all these corporate bodies are very distinct, from the point of view of legal rights and liabilities, from municipal corporations, which are the highest class of public corporations, and are invested with the largest powers, and subject to the most extensive liability. The distinction between these classes of public corporations is thus drawn by Judge Dillon:

"The *school district or the road district* is usually invested by general enactments operating throughout the state with a

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<sup>8</sup> *Miners' Ditch Co. v. Zellerbach* (1869), 37 Cal. 543, 577, 99 Am. Dec. 300.

<sup>9</sup> *In re Werner* (1900), 129 Cal. 567, 62 Pac. 97.

<sup>10</sup> *Dean v. Davis* (1876), 51 Cal. 406.

<sup>11</sup> *Central Irr. Dist. v. De Lappe* (1889), 79 Cal. 351, 21 Pac. 825.

<sup>12</sup> *In re Werner* (1900), 129 Cal. 567, 62 Pac. 97.

corporate character, the better to perform within and for the locality its special function, which is indicated by its name. It is but an instrumentality of the state, and the state incorporates it that it may the more effectually discharge its appointed duty. So with *counties*. They are involuntary political or civil divisions of the state, created by general laws to aid in the administration of government. Their powers are not uniform in all the states, but these generally relate to the administration of justice, the support of the poor, the establishment and repair of highways,—all of which are matters of *state*, as distinguished from municipal concern. They are purely auxiliaries of the state; and to the general statutes of the state they owe their creation, and the statutes confer upon them all the powers they possess, prescribe all the duties they owe, and impose all liabilities to which they are subject. Considered with respect to the limited number of their corporate powers, the bodies above named rank low down in the scale or grade of corporate existence; and hence have been frequently termed *quasi* corporations. This designation distinguishes them on the one hand from private corporations aggregate, and on the other from municipal corporations proper, such as cities or towns acting under charters, or incorporating statutes, and which are invested with more powers and endowed with special functions relating to the particular or local interests of the municipality, and to this end are granted a larger measure of corporate life.”<sup>13</sup>

The limited nature of a school district may be seen from the wording of section 1575 of the Political Code: “Every school district must be designated by the name and style of ‘..... district (using the name of the district), of ..... county’ (using the name of the county in which such district is situated); and in that name the trustees may sue and be sued, and hold and convey property for the use and benefit of such district. A number must not be used as a part of a designation of any school district.” They are quasi corporations of the most limited powers known to the law. The trustees have special powers, set out in the statutes, and cannot exceed the limits. They are regarded as special agents without general power to represent the district. For some purposes the county supervisors represent the district, for others the county superintendent. It is provided that they may be sued, but that does not enlarge the scope of their powers. They are unlike municipal corporations, some of whose powers are con-

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<sup>13</sup> 1 Dillon, Mun. Corp., 5th ed., § 37. See also the leading case of *Hamilton County v. Mighels* (1857), 7 Oh. St. 109; *Skelly v. School Dist.* (1894), 103 Cal. 652, 37 Pac. 643.

sidered private, as being for the special advantage of the municipality as distinguished from the general public. They cannot be sued by implication, without direct authority. In this they are like the state itself, and like counties, political subdivisions of the state, which may be sued only with the permission of the state. Their funds are all devoted by statute to specific purposes. They are not therefore subject to garnishment in behalf of a creditor.<sup>14</sup> And on the other hand, not being mentioned in section 1058 of the Code of Civil Procedure, which exempts the state, and counties and cities from the necessity of giving security in civil actions, school districts can claim no such exemption.<sup>15</sup>

*Plenary power of the legislature over school districts.*—Subject to constitutional limitations, the power of the legislature over school districts is plenary. It may divide, change, or abolish them, and provide for their government at pleasure.<sup>16</sup> The legislature has exercised its power and adopted an extensive school law extending from section 1543 to section 1892 of the Political Code, some of the sections expressly providing for school districts, and all assuming their existence. The school district is a corporation established for educational purposes.<sup>17</sup> It is implied, then, though nowhere expressly provided, that the school which a school district maintains shall be within the district.<sup>18</sup> For the purpose of establishing school districts is that schools may be brought conveniently near the pupils. This intent would be defeated if the trustees could maintain schools outside the district. The constitution declares that "the legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district."<sup>19</sup> Further, the Political Code gives the trustees power to manage school property *within* the district,<sup>20</sup> and requires every new district to open school therein within six months.<sup>21</sup>

A school district may be included within the same territory as a municipality, but is nevertheless a separate and distinct cor-

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<sup>14</sup> *Skelly v. School Dist.* (1894), 103 Cal. 652, 37 Pac. 643.

<sup>15</sup> *Mitchell v. Board of Education* (1902), 137 Cal. 372, 70 Pac. 180.

<sup>16</sup> *Hughes v. Ewing* (1892), 93 Cal. 414, 28 Pac. 1067; *Bay View School Dist. v. Linscott* (1893), 99 Cal. 25, 33 Pac. 781.

<sup>17</sup> *Estate of Bulmer* (1881), 59 Cal. 131.

<sup>18</sup> *Bay View School Dist. v. Linscott* (1893), 99 Cal. 25, 33 Pac. 781.

<sup>19</sup> Cal. Const., art. ix, § 5.

<sup>20</sup> Cal. Pol. Code, § 1858.

<sup>21</sup> Cal. Pol. Code, § 1617.

poration. "The legislative declaration,<sup>22</sup> that every incorporated city is a school district does not import into the organization of the school district any of the provisions of the city charter, or limit the powers and functions which, as a school district, it has by virtue of the Political Code. The city is a corporation distinct from that of the school district, even though both are designated by the same name and embrace the same territory. The one derives its authority directly from the legislature, through the general law providing for the establishment of schools throughout the state, while the authority of the other is found in the charter under which it is organized."<sup>23</sup>

There are several interesting cases involving the authority of the legislature, or its agents, to change the boundaries of school districts, throwing, perhaps, the schoolhouse and other buildings which had belonged to one district into a new district. We shall review them briefly.

1. The electors of Fresno City School voted to raise \$6000 for building a schoolhouse, but the trustees did not notify the county supervisors of the fact until September 23, 1890. On September 6, 1890, the supervisors changed the boundaries of the school district by excluding therefrom certain lands and transferring the same to other districts. On the first Monday in October, 1890, the trustees of the Fresno City School District levied a tax, for raising the \$6000, on all the property that was within the district at the time the original vote was taken. The owners of the land excluded from the district by the action of the supervisors on September 6 sought to restrain the tax collector from collecting the tax so far as related to them. The court held,<sup>24</sup> that the power to change the boundaries of a district, as well as to define them in the first instance, was of legislative origin, and whether exercised immediately by the legislature or mediately by the board of supervisors—the local legislature—was, whenever exercised, a legislative act. In the exercise of its right, the legislature might make such provision respecting the property and obligations of the corporation of the school district as it might deem equitable or proper, and its action would be conclusive. This would be but carrying out the provisions of sections 1576 and 1577 of the Political Code. And under sections 1577 and 1830, it must be under-

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<sup>22</sup> Cal. Pol. Code, § 1576.

<sup>23</sup> *Kennedy v. Miller* (1893), 97 Cal. 429, 32 Pac. 558. See also *Mitchell v. Board of Education* (1902), 137 Cal. 372, 70 Pac. 180.

<sup>24</sup> *Hughes v. Ewing* (1892), 93 Cal. 414, 28 Pac. 1067.

stood that when the boundaries of a school district are changed either by forming a new corporation out of the territory of the original corporation or by transferring a portion of the territory to another corporation, in the absence of any provision of the law on the subject, the old corporation will be entitled to all the property and be solely liable for all the obligations, and the territory taken therefrom will not be entitled to any of the corporate property nor be liable for any of the obligations of the old corporation.<sup>25</sup> In order to render the territory which is transferred from one school district to another liable for any obligations incurred by that district, or to a contribution for any of its obligations, it would be necessary to show that such liability had been declared by the legislature.<sup>26</sup> The constitution,<sup>27</sup> while taking from the legislature the power to impose taxes upon counties or other public corporations, has not given such corporations directly the power to impose taxes themselves, but has authorized the legislature to vest such power in them by general laws. Consequently, the only power of a school district or other public corporation to impose a tax is such as is granted to it by the legislature by general laws.

The word "district"<sup>28</sup> is not the equivalent of "territory within the district", but is a synonym for "corporation"<sup>29</sup> voting the tax, and the tax to be levied by the supervisors is limited to the property within this corporation. From this it resulted that the "Fresno City School District" was the district that voted the tax, and it was only upon the property within the "Fresno City School District" that the tax could be levied. By a change in its boundaries the public corporation did not lose its identity or name, or cease to be the same legal entity it was before.<sup>30</sup> On principle, a tax on property which is outside the district to be benefited cannot be upheld.<sup>31</sup>

2. In 1865 there were in Santa Cruz County two adjacent school districts, one known as the Santa Cruz School District, and the other as the Bay View School District. From that time

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<sup>25</sup> Authorities: *Town of Depere v. Town of Bellevue* (1872), 31 Wis. 120, 11 Am. Rep. 602; *Laramie County v. Albany County* (1875), 92 U. S. 307, 23 L. Ed. 552.

<sup>26</sup> Cal. Pol. Code, § 1817.

<sup>27</sup> Cal. Const., art. xi, § 12.

<sup>28</sup> Cal. Pol. Code, § 1837.

<sup>29</sup> Cal. Pol. Code, § 1575.

<sup>30</sup> *Bates v. Gregory* (1891), 89 Cal. 387, 26 Pac. 821.

<sup>31</sup> Authority: *Richards v. Daggett* (1808), 4 Mass. 534.

on each maintained its autonomy, electing trustees at proper times, and keeping school within its respective boundaries. In 1868 the Bay View district purchased a lot for its schoolhouse and expended \$5000 in erecting the building. In every apportionment of money by the county superintendent until December 1, 1891, its share was regularly allotted. In 1866, the town of Santa Cruz was incorporated, and its exterior boundaries made to include a portion of the Bay View district, embracing the lot on which the Bay View trustees subsequently erected the schoolhouse and where the school was maintained. In 1876 the City of Santa Cruz was incorporated with the same boundaries as the town formerly had. After December 15, 1891, the county superintendent refused to make an apportionment of school moneys to the Bay View district.

It was held<sup>32</sup> that, under section 1576 of the Political Code, there could be no doubt that the City of Santa Cruz constituted a school district, nothing having been done to annex any territory to the city for school purposes.<sup>33</sup> And after the incorporation of the city the county board of supervisors ceased to have any power over the schools within the city.<sup>34</sup> The only grounds upon which the Bay View district could claim to have any rights were that the purchase of the lot, the erection of the schoolhouse and the maintenance of the school by the Bay View district, the apportionment of moneys by the county superintendent, and the acquiescence by the City of Santa Cruz, constituted an estoppel. To this contention it was held by the court that an act of the legislature fixing the boundaries of one of the political subdivisions of the state cannot be repealed by the officers of such subdivisions even by acts of estoppel. And the principle, already mentioned, was relied on, that the only schools which a district could maintain were those that were situated within its territorial boundaries.

3. In 1876 the Vernon School District bought certain land for school purposes. In 1896 the city of Los Angeles, under the provisions of the Annexation Act of 1889,<sup>35</sup> annexed certain territory which included that portion of Vernon School District which the district had purchased in 1876. The annexation proceedings were attacked on the ground that the act of 1889 was

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<sup>32</sup> Bay View School Dist. v. Linscott (1893), 99 Cal. 25, 33 Pac. 781.

<sup>33</sup> Cal. Pol. Code, § 1576.

<sup>34</sup> Ibid.

<sup>35</sup> 1889 Stats. Cal. 358.

unconstitutional for two reasons, (1) because it conferred upon the electors of the municipality a special privilege not conferred upon the electors of the territory annexed; and (2) if the effect of the annexation was to make the board of education of the city successors in office of the Vernon School District, such purpose was not expressed in the title of the act.

It was held,<sup>36</sup> as to the first point, that the act was constitutional, for while the initiative in the annexation proceedings pertained solely to the municipality, the residents of the outside territory sought to be annexed were protected by the provision, which required the affirmative action of a majority of the voters thereof to authorize the annexation. As to the second point, it was held that the title of the act was broad enough to include a provision that the "annexed territory shall be to all intents and purposes a part of such municipal corporation, except only that no part of such annexed territory shall ever be taxed to pay any portion of any indebtedness or liability of such municipal corporation contracted prior to or existing at the time of such annexation." It resulted, therefore, that the annexation was regular, complete and constitutional, and that part of the Vernon district, including the property acquired for school purposes, was henceforth within the municipality of Los Angeles, and the jurisdiction over it in school matters was transferred from the Vernon trustees to the Los Angeles board of education.<sup>37</sup>

4. In the next case,<sup>38</sup> we find that prior to 1870 there was a school district adjacent to the City of Stockton, known as North School District. By the act of reincorporation of the City of Stockton in 1870 a portion of the North district became a part of the municipality. In 1897 a majority of the heads of the families in the portion of the North district outside of the city limits petitioned to be annexed to the city for school purposes only, and in accordance therewith the county board of supervisors duly adopted an order annexing, for school purposes only, all the remainder of the North School district which had not been added to the city of Stockton by the re-incorporation in 1870. The proceedings were all avowedly in accordance with section 1576 of the Political Code. In October 1898, a resident of the portion of

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<sup>36</sup> *Vernon School District v. Board of Education* (1899), 125 Cal. 593, 58 Pac. 175.

<sup>37</sup> Cal. Pol. Code, § 1576.

<sup>38</sup> *Kramm v. Bogue* (1899), 127 Cal. 122, 59 Pac. 394.

the North district, which had been annexed in 1897, applied to have his son admitted to the schools of Stockton. The petition was refused on the ground that the petitioner and his son did not reside within the limits of the city of Stockton. The main reliance of the Stockton school authorities was that section 1576 did not in terms apply to cities already incorporated. But the court held that such a construction was too narrow, that the section in question was to be liberally construed,<sup>39</sup> and that territory might be added, for school purposes, to a city already incorporated, as well as to a new municipal corporation. North School District had, consequently, disappeared, and its territory had come under the jurisdiction of the Stockton board of education, and petitioner and his son were of course residents of the Stockton school district.

5. In the fifth case<sup>40</sup> which we mention, the Pass School District had been for many years a school district of Los Angeles County. In 1889 certain real property was deeded to it for school purposes. In November, 1903, Hollywood City was incorporated, and Hollywood City School District came into existence. The property bought in 1889 fell within the corporate limits of the Hollywood City district. Adopting the language of the court: "The question presented may be thus stated: What, under the indicated circumstances, is the disposition made by the law of the real property of such corporation owned and used for the corporate purposes when, by a change in the boundaries, that property falls within the territorial limits of a new corporation organized for identical purposes? Or, wording it differently, did the title, dominion, power, and control over the land in controversy pass to the Hollywood City School District, or did they remain where formerly they had been, with the Pass School District?" It was held that this question had been conclusively answered by previous decisions of the court.<sup>41</sup> "By the legal annexation of the land in controversy to the city of Hollywood and the Hollywood City School District, (which latter, by virtue of section 1576 of the Political Code, sprang at the same time into existence), the power of the Pass School District to use this property for school

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<sup>39</sup> Cal. Civ. Code, § 4.

<sup>40</sup> *Pass School Dist. v. Hollywood City School Dist.* (1909), 156 Cal. 416, 105 Pac. 122.

<sup>41</sup> *Los Angeles County v. Orange County* (1893), 97 Cal. 329, 32 Pac. 316; *Johnson v. San Diego* (1895), 109 Cal. 468, 42 Pac. 249, 30 L. R. A. 178; *Vernon School District v. Board of Education* (1899), 125 Cal. 593, 58 Pac. 175.

purposes undoubtedly came to an end. For, by section 1617 of the Political Code, the management and control of school property within their district is vested in the trustees of the district. This proposition, as we understand it, appellant does not dispute. But it contends that *title* to this property still remained in the plaintiff district, with the correlative rights of leasing or selling the same." The court answered this contention in the following words: "The legislative power being full and complete over the matter, as a part of that power it may make provision for the division of the property and the apportionment of the debts of the old corporation, when a portion of its territory and public property are transferred to the jurisdiction of another corporation. But in the absence of such provision, the rule of the common law obtains, and that rule leaves the property where it is found, and the debt upon the original debtor."<sup>42</sup> The position taken by the court has abundant sanction in decisions of the California Supreme Court, the Supreme Court of the United States, and the courts of many other jurisdictions.<sup>43</sup>

To meet the argument, in this and the other cases which have been reviewed above, that an injustice would be done to the school district which had bought property and erected school-houses only to have them taken away and given to another district, the court said:

"The state is profoundly interested in the education of its young, but has no deep concern over the personality of the trustees who shall administer this trust, so long as the administration is in the orderly form of law. But to relieve against the possibility of injustice being worked by the operation of the rule which might, without recompense, take a schoolhouse away from one district and assign it to another,

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<sup>42</sup> *Johnson v. San Diego* (1895), 109 Cal. 468 at p. 477, 42 Pac. 249, 30 L. R. A. 178; *Board of School Directors v. Ashland* (1894), 87 Wis. 533, 58 N. W. 377.

<sup>43</sup> *Vernon School Dist. v. Board of Education* (1899), 125 Cal. 593, 58 Pac. 175; *Bay View School Dist. v. Linscott* (1893), 99 Cal. 25, 33 Pac. 781; *Laramie County v. Albany County* (1875), 92 U. S. 307, 23 L. Ed. 552; *Mount Pleasant v. Beckwith* (1879), 100 U. S. 514, 25 L. Ed. 699; *McGovern v. Fairchild* (1891), 2 Wash. St. 479, 27 Pac. 173; *School Township of Allen v. School Town of Macy* (1887), 109 Ind. 559, 10 N. E. 578; *New Point, etc., v. School Town of New Point* (1894), 138 Ind. 141, 37 N. E. 650; *Prescott v. Town of Lennox* (1898), 100 Tenn. 591, 47 S. W. 181; *Bloomfield v. Glen Ridge* (1896), 54 N. J. Eq. 276, 33 Atl. 925; *Board of Education v. Board of Education* (1887), 30 W. Va. 424, 4 S. E. 640; 1 Dillon, *Mun. Corp.*, 5th ed., § 35; *City of Wellington v. Wellington Township* (1891), 46 Kan. 213, 26 Pac. 415.

this state has made explicit provision whereby the use of the school under the changed conditions may still be open to the children within the territory to which it originally belonged. This provision is found in section 1576 of the Political Code. But the residents within the plaintiff district have not seen fit to avail themselves of it. We are unable to perceive, therefore, that the rule adopted in this state either works injustice to plaintiff or does violence to any of its constitutional rights."

*Dedications and bequests to school districts.*—In two cases the limited capacity of the school district was strongly contended for, and the attempt was made to show that a school district could not receive a dedication of property nor be the object of testamentary disposition. In the former case,<sup>44</sup> which was an action to quiet title, the defendant claimed that trustees of the district could not accept a dedication of land without being authorized by a previous vote of the district. This claim was made under an act of April 6, 1863,<sup>45</sup> which provided that the board of trustees should "have power, when directed by vote of their district, to purchase, receive, hold, and convey real or personal property for school purposes." It was held, however, that this section has no application to a *dedication* of land. A dedication of land for a public or charitable use is good even without a donee to take it; and the legislature as well as chancery may appoint trustees who may maintain actions in regard to the land.<sup>46</sup> Furthermore, it is not essential to a dedication that the legal title should pass from the owner; nor that there should be any grantee of the use or easement *in esse* to take the fee, such cases being exceptions to the general rule requiring a grantee; nor is a deed or writing necessary to constitute a valid dedication; it may be by parol; and no specific length of possession is necessary to constitute a valid dedication.<sup>47</sup> On these grounds the dedication of the land in question to the school district was held valid and indefeasible.

In the second case,<sup>48</sup> the deceased had willed the residue of his estate to "Laurel School District". It was found that Laurel School District was a duly organized public school district under the laws of the state, that as such it was a corporation,<sup>49</sup> for educa-

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<sup>44</sup> *Carpenteria School Dist. v. Heath* (1880), 56 Cal. 478.

<sup>45</sup> Hittell's Gen. Laws, art. 6692.

<sup>46</sup> See Dillon, *Mun. Corp.*, 5th ed., § 1086.

<sup>47</sup> Authority: *New Orleans v. U. S.* (1836), 35 U. S. (10 Pet.) 662, 712, 9 L. Ed. 573.

<sup>48</sup> *Estate of Bulmer* (1881), 59 Cal. 131.

<sup>49</sup> Cal. Pol. Code, §§ 1575 ff.

tional purposes, and could, therefore, take by will.<sup>50</sup> Section 1275 of the Civil Code, which by implication gives this power to a school district reads:

"A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that corporations other than counties, municipal corporations, and corporations formed for scientific, literary, or solely educational or hospital purposes, cannot take under a will, unless expressly authorized by statute; subject, however, to the provisions of section thirteen hundred and thirteen."

*De facto school districts.*—School districts may exist *de facto* as well as *de jure*, and all the protection and presumptions that prevail in the case of *de facto* officers will be recognized in the case of *de facto* school districts. An interesting case,<sup>51</sup> involving these principles, was decided by the Supreme Court in 1895. Coronado Beach had for several years been the subject of dispute whether it was within or without the territorial limits of the city of San Diego. The district court had in 1877 held that it was not part of the city, but judgment was not entered for eleven years. The case was then, in 1888, appealed, and the supreme court reversed the decision of the district court, and held that Coronado Beach was within the limits of the city of San Diego.<sup>52</sup> In January 1887, while the peninsula was regarded, under the decision of the district court, as outside the limits of the city, the county board of supervisors took formal steps to organize Coronado Beach into the "Coronado Beach School District of San Diego county". During the next four years this district exercised the powers and discharged the duties of a school district organized under the laws of California. It had its own board of trustees. It received and expended state and county school moneys, employed teachers, and maintained public schools. Forty thousand dollars in bonds were voted, the bonds sold, and the proceeds expended in the purchase of land and the erection of a schoolhouse. The plaintiff in the case had paid taxes in 1888 and 1889, and sued to recover back the taxes thus paid on the ground that there was no such school district in legal existence as that of Coronado Beach.

The Supreme Court laid down the following principles: 1. A school district is a corporation organized for educational pur-

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<sup>50</sup> Cal. Civ. Code, § 1275.

<sup>51</sup> Hamilton v. County of San Diego (1895), 108 Cal. 273, 41 Pac. 305.

<sup>52</sup> San Diego v. Granniss (1888), 77 Cal. 511, 19 Pac. 875.

poses,<sup>53</sup> and as the law stood in 1887, "each county, city, or incorporated town, unless subdivided by the legislative authority thereof, forms a school district."<sup>54</sup> 2. The district had a *de facto* existence. There was nothing lacking to give the color of legality to its organization, or to render it impolitic to allow the collateral impeachment of such existence. 3. The same rule which recognizes officers *de facto* applies to corporations *de facto*. 4. The order of the board of supervisors purporting to create the district was the formal exercise of legislative power;<sup>55</sup> and thereunder everything having been done to constitute the district a corporation colorably, if not legally, the law will refuse, in an incidental and collateral way, to declare its proceedings void. 5. Although a part of the district composed of the city of San Diego, yet it was legally capable of segregation as an independent district.<sup>56</sup> 6. The board of supervisors of the county was a body having power under the law to organize new school districts in the county, and the order of the board of supervisors was within the lines of the statute,<sup>57</sup> and valid on its face, and only invalid because of the fact, then unknown, that the territory in question was within the limits of an incorporated city. 7. The order purported to form and establish into a school district the territory in question, with a designated name, in formal compliance with the statute.<sup>58</sup> 8. The district when organized exercised the powers and discharged the duties of a legally organized school district. 9. This was done to the exclusion of other districts; that is, no other district maintained a school or performed other office of such a corporation within its confines. 10. There was acquiescence not merely by the San Diego (city) school district but by the state and county in the assumption of such prerogatives by the new district. 11. The plaintiff, and those he represents, recognized the corporate existence of the district by paying taxes for its use. 12. Taxpayers cannot recover back taxes paid by them to a *de facto* school district for its bond and interest fund.

Another case,<sup>59</sup> presented the following facts: The Santa Barbara City School District in 1891, organized a high school under

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<sup>53</sup> Authority: Estate of Bulmer (1881), 59 Cal. 131.

<sup>54</sup> Cal. Pol. Code, § 1576.

<sup>55</sup> Hughes v. Ewing (1892), 93 Cal. 414, 28 Pac. 1067.

<sup>56</sup> Cal. Pol. Code, § 1576.

<sup>57</sup> Cal. Pol. Code, §§ 1577-79.

<sup>58</sup> Cal. Pol. Code, §§ 1575, 1577.

<sup>59</sup> Hancock v. Board of Education (1903), 140 Cal. 554, 74 Pac. 44.

the High School Act of 1891 and continuously maintained said high school to January, 1900. The High School Act of 1891 was declared unconstitutional in *McCabe v. Carpenter*, 102 Cal. 469, 36 Pac. 836. That act was repealed in 1893 and instead thereof a new law was passed,<sup>60</sup> providing for the establishment and management of high schools. A new municipal charter for Santa Barbara was duly adopted and went into effect in January, 1900.<sup>61</sup> This charter provided for a board of education, directing that it should succeed to all the rights, property and obligations of the school trustees of the former school district, and that it should have power to establish and maintain high schools. In August, 1899, the school trustees had made a contract with the plaintiff, engaging him to act as principal of the high school from September 4, 1899, for one school year of ten months. Upon coming into office in January, 1900, the new board of education refused to allow plaintiff to act longer as principal of the high school according to the contract with their predecessors. The theory of the plaintiff was that the board of trustees of the city of Santa Barbara, upon their coming into office under the charter of that city, adopted in 1899, succeeded to all the rights and obligations, previously existing, of the high school district, and were obliged to carry out the contract which the plaintiff had made with that district. The principal theory of the defendant was that the so-called high school district, which, by its board, was alleged to have made the contract, had no existence, either in law or in fact, sufficient to enable it to make the contract, and that therefore it could not be said that there was a contract or obligation which the defendant could have assumed, and hence there could be no recovery. These contentions presented the question, whether the invalidity of the act of 1891, as decided in the case of *McCabe v. Carpenter*, 102 Cal. 469, 36 Pac. 836, under which the Santa Barbara high school was organized, and the failure of the district to reorganize under the subsequently amended law, rendered the alleged high school district non-existent so as to be unable to make valid contracts.

It was held by the court, speaking through Mr. Justice Shaw, that though the law under which a school district votes to establish, and does organize a high school, is unconstitutional, and is afterwards repealed by a law which authorizes it to organize a high school, and provides that its board of school trustees shall con-

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<sup>60</sup> Cal. Pol. Code, § 1670.

<sup>61</sup> 1899 Stats. Cal. 486, § 172.

stitute the high school board, and manage and control the high school, and though there is no attempt to organize under the latter law, yet the acts of the trustees, as a high school board, in managing the high school, after passage of the latter act, claimed by them to be authorized, are under color of law, and cannot be collaterally attacked, so that a board of education, which succeeds to their rights and obligations, receiving money raised by taxes for the high school, is liable for breach of its contract employing a high school teacher.

It was further held that the existence of the legal character of a school district, formed under the state law, embracing a city and outlying territory, is not affected by the adoption of a charter for the city putting the school department under the government of a new board; and that section 1575 of the Political Code, providing that the trustees of every school district may sue and be sued, applies to city boards of education, as well as boards of country school districts.

*School taxes.*—The constitution<sup>62</sup> provides: "The proceeds of all lands . . . shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and *such other means* as the legislature may provide, shall be inviolably appropriated to the support of common schools throughout the state." An act of 1863<sup>63</sup> authorized Placer County to subscribe to the capital stock of the Central Pacific Railroad Company and provided that all money that should be paid to Placer County by said company should be placed in the "Railroad Fund". The question arose whether this act included properly and legally *all* taxes paid by the railroad company, even taxes paid by the railroad under a tax levied by the supervisors for the support of the common schools. It was held<sup>64</sup> that under the constitutional provision whenever the legislature raises a fund, by taxation or otherwise, for the support of common schools, it cannot, by contemporaneous or subsequent legislation, divert the fund to a different purpose.<sup>65</sup>

The school district itself is the competent party to recover

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<sup>62</sup> Cal. Const. 1849, art. ix, § 2; Cal. Const. 1879, art. ix, § 4. This section was copied from § 2 of art. x of the original Constitution of Iowa.

<sup>63</sup> 1863 Stats. Cal. 145.

<sup>64</sup> Crosby v. Lyon (1869), 37 Cal. 242.

<sup>65</sup> Authority: District Township of Dubuque v. County Judge of Dubuque County (1862), 13 Iowa 250.

delinquent taxes. For while the law provides<sup>66</sup> that all taxes upon township, road, school or local districts shall be collected in the same manner as county taxes, this does not authorize a suit in the name of the county.

"To say that such taxes [on railroad property imposed upon townships, road, school or other local districts] shall be collected in the same manner as county taxes are to be collected, is not the equivalent of a permission to sue for them in the name of the county, and, if it were, the county does not, and cannot, collect such taxes by suit in its own name."<sup>67</sup>

Where a school district is composed of the territory lying within the municipal limits and also other territory adjoining outside the city it is competent for the city authorities, council or board of trustees, to levy a tax for school purposes on all the property of the district. This is held to be expressly provided for in sections 1576 and 1670 of the Political Code, and these sections, in giving this power, are held to be constitutional.<sup>68</sup>

Where a special school tax has been assessed upon improvements described as a dam situated on a tract of land within the school district the dam being in fact outside of the district, but the lake thereby formed being partly within the district on the tract described, such tax, after voluntary payment thereof by the owner, cannot be recovered back by him, on the alleged ground of a mistake of fact on his part as to the location of the property assessed.<sup>69</sup> And district school taxes, as well as state and county taxes, are included in section 3817 of the Political Code, as amended in 1895;<sup>70</sup> which authorizes redemption of real estate, sold to the state for delinquent taxes, by payment of the amount due thereon at the time of the sale together with penalties based thereon. Therefore, one cannot escape the payment of the penalties in redeeming land sold for delinquent school taxes any more than for other taxes.<sup>71</sup>

It has been the aim, always thwarted, of school superintendents to devise some method whereby the necessity of going outside the school authorities in the levying of school taxes might be avoided. An act of 1863 in reference to the government of the common

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<sup>66</sup> Cal. Pol. Code, § 3671.

<sup>67</sup> *San Bernardino County v. S. P. R. R. Co.* (1902), 137 Cal. 659, 70 Pac. 782.

<sup>68</sup> *Visalia Savings Bank v. Visalia* (1908), 153 Cal. 206, 94 Pac. 888.

<sup>69</sup> *San Diego, etc. Co. v. La Presa School Dist.* (1898), 122 Cal. 98, 54 Pac. 528.

<sup>70</sup> 1895 Stats. Cal. 333, c. 218.

<sup>71</sup> *Palomares Land Co. v. Los Angeles County* (1905), 146 Cal. 530, 80 Pac. 931.

schools in Sacramento, provided that the board of education should advise the city board of trustees as to the amount of money necessary to be raised by local taxation for the support of the schools for the ensuing year, and that the board of trustees should levy a school tax "which will produce a sum that will make the amount required by the board of education", provided such tax shall not exceed 35 cents on the \$100. The amount called for by the board of education in 1892 required a tax of 35 cents. The board of trustees levied a tax of 26 cents.

In an action by the board of education against the board of trustees, to require them to levy a tax of 35 cents on the \$100, the Supreme Court held<sup>72</sup> that the fair and reasonable interpretation to be given to the statute is, that the board of education shall give to the board of trustees an estimate in detail of the amount of money which in its judgment will be needed for disbursement in behalf of certain school purposes, and that the board of trustees, upon consideration thereof, shall exercise its own judgment in determining whether the purposes therein specified are suitable objects of expenditure, and whether the amount of money named in the statement is correctly estimated, and that thereupon it shall levy such taxes as in its judgment, having regard to the interests of the entire municipality as well as of its several parts, will be proper and just. The rule under which the court so held was that in the construction of statutes relating to the performance of a public duty which does not affect any private rights or interests, but concerns the public alone, the language of the statute, although imperative in terms, must be regarded as directory rather than mandatory.

The High School Act of March 20, 1891,<sup>73</sup> the first of the acts upon which the present system of high schools in California rests, contained the following provision:

"An annual tax shall be levied by the authorities whose duty it is to levy taxes in counties, cities, incorporated towns, the amount of said tax being estimated by the County Superintendent of Schools, . . . and by him certified to the proper authorities on or before the second Monday of September of each year. And it shall be the duty of such authorities to levy such a rate as will produce the amount estimated to be necessary for such purposes."

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<sup>72</sup> Board of Education v. Board of Trustees (1892), 96 Cal. 42, 30 Pac. 838.

<sup>73</sup> 1891 Stats. Cal. 182.

This was a repetition of the attempt which had been made in the Sacramento Act of 1863, and which had been nullified by the Supreme Court. In the case in which the question was anew presented for decision,<sup>74</sup> the court took a different line of argument and held the act unconstitutional. The court argued as follows:

“ . . . since the power to levy a tax is purely legislative, it would seem to follow, that the power cannot be vested in any other authority of the local corporation than the body in which is vested the legislative power of such municipal corporation. At all events, it could not vest such power in an executive officer of such corporation . . . when the estimate reaches the board of supervisors of the county which the act, in a way, recognizes as the proper authority to levy the tax, it has nothing to do but make a mathematical calculation, which consists in dividing the amount of the estimate by the amount of the taxable property in the district, and to enter the order. This is not the exercise of power. It is obedience to a command. Where one is required to do a given act in a mode prescribed, without reference to his judgment or discretion, except as to the mode of complying, the act is purely ministerial.”

It was accordingly held that if the legislature cannot impose a tax upon the property or inhabitants of a school district, it would seem to follow that it cannot prescribe a procedure through which such tax would inevitably be levied without leaving some discretion in regard to it to the local authorities. That was what the provision of the act of March 20, 1891, in question did, in the opinion of the court, and was therefore in conflict with section 12 of article XI of the constitution. If the court had followed the decision in volume 96 of the California Reports, it could have upheld the statute and reached the same practical result.

In concluding this section of the present chapter, it may be noted that the Supreme Court upheld the revision of the High School Act as amended in 1895,<sup>75</sup> which provided that the high school should furnish to the authorities whose duty it is to levy taxes “an estimate of the amount of money required for conducting the school for the school year”, and that said authorities should levy a tax “sufficient in amount to maintain the high school”. The court held that this language cured the defects noted in *McCabe v. Carpenter*, 102 Cal. 469, 36 Pac. 836, because it left discretion in

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<sup>74</sup> *McCabe v. Carpenter* (1894), 102 Cal. 469, 36 Pac. 836.

<sup>75</sup> Cal. Pol. Code, § 1670.

the appropriate taxing body to determine what amount would be sufficient for the purpose.<sup>76</sup>

It may be remarked that in one of these cases,<sup>77</sup> the court labored too arduously to explain the meaning of the simple, compendious expression, "the authorities whose duty it is to levy taxes in said city, incorporated town, school district, or union high school district". This phrase obviated the necessity of an enumeration to fit each case and was not the proper occasion for the following remark, in some connections suitable enough: "We have found it difficult to harmonize all the different clauses relating to the school system so as to give effect to the whole, and were we inclined to cavil, abundant cause might be found therefor in some of our school legislation."

*School bonds.*—In an action involving the refusal of a county auditor to sign and attest certain bonds, it was held that there being no specific requirement of the law declaring that bonds of a school district shall be made payable in money of a particular form or kind, a resolution of the trustees of the district, calling an election to determine whether the bonds shall be issued, is sufficient, when it provides for bonds payable in lawful money of the United States, and supports a subsequent order of the board of supervisors directing the issuance of the bonds and making them payable in gold coin of the United States. And, likewise, it is competent for the board of supervisors, after an election authorizing the issuance of school bonds, to determine whether the interest thereon should be paid annually or semi-annually, notwithstanding the resolution of the board of trustees and the notice of the election were silent on that subject.<sup>78</sup>

Elections for school bonds must be held with scrupulous care, and especially in substantial compliance with the statute. A vote of the district is requisite for the issue of bonds.<sup>79</sup> And if there is not an observance of the formalities prescribed in the calling or conduct of the election, there is a fatal defect. Thus, in an election for school bonds, the notice, either posted or published, calling the election, variously described the place where the election would be held, as "at the hall in the town of Caruthers", "at the public

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<sup>76</sup> Chico High School Board v. Supervisors (1897), 118 Cal. 115, 50 Pac. 275; Board of Education v. Board of Trustees (1900), 129 Cal. 599, 62 Pac. 173.

<sup>77</sup> Chico High School Board v. Supervisors (1897), 118 Cal. 115, 50 Pac. 275.

<sup>78</sup> County of Kings v. Rea (1913), 164 Cal. 508, 129 Pac. 772.

<sup>79</sup> Cal. Pol. Code, § 1880.

schoolhouse in the town of Caruthers", "at the schoolhouse in Caruthers school district". The court said that it was unable to say that the town hall and the public schoolhouse in the town of Caruthers were the same place, or that the schoolhouse in Caruthers school district and the public schoolhouse in the town of Caruthers referred to the same building. It was accordingly held that there was no requirement of the election law more important in its observance than that the notice should correctly state where the election was to be held, and, hence, where the notices were inconsistent, contradictory and misleading, the election was invalid.<sup>80</sup>

In Oakland, San Francisco and Los Angeles, the question has arisen whether the issuance of bonds for school purposes in a school district embraced in whole or in part within the city limits is, or may be, a municipal affair. In Oakland,<sup>81</sup> and in San Francisco,<sup>82</sup> it was held that the city might bond itself, issuing municipal bonds, for the acquisition of land for school purposes and for the building of schoolhouses. In the Los Angeles case,<sup>83</sup> in which it was contended that the Oakland and San Francisco cases established by implication that all matters within the corporate limits of a city were "municipal affairs", it was held that this was in no sense true, and that the school district of Los Angeles was not debarred from issuing bonds of the school district by the fact that it was included within the limits of the municipality. These cases are mentioned here merely for the sake of completeness, having been more fully reviewed in a previous chapter.<sup>84</sup>

*School moneys.*—Two actions were brought, one against the County of San Diego,<sup>85</sup> the other against the County of San Luis Obispo,<sup>86</sup> for the recovery of taxes paid, in the former case to San Diego City School District, in the latter to a Union High School District. In both cases it was held that the action had been brought against the wrong party defendant. The grounds of the decisions were that the county as such has no interest in the funds of a

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<sup>80</sup> *People v. Caruthers School Dist.* (1894), 102 Cal. 184, 36 Pac. 396.

<sup>81</sup> *In re Wetmore* (*Wetmore v. Oakland*) (1893), 99 Cal. 146, 33 Pac. 769.

<sup>82</sup> *Law v. San Francisco* (1904), 144 Cal. 384, 77 Pac. 1014.

<sup>83</sup> *Los Angeles City School District v. Longden* (1905), 148 Cal. 380, 83 Pac. 246.

<sup>84</sup> 2 Cal. Law Rev. 469-471.

<sup>85</sup> *Pacific Mut. Life Ins. Co. v. San Diego County* (1896), 112 Cal. 314, 41 Pac. 423, 44 Pac. 571.

<sup>86</sup> *Elberg v. San Luis Obispo County* (1896), 112 Cal. 316, 41 Pac. 475, 44 Pac. 572.

school district, nor any control over the same in the county treasury;<sup>87</sup> and it was not the intent of section 3819 of the Political Code to permit an action against a county to recover taxes paid to and held by its officials, neither for the benefit of the county nor subject to its disposition, but for the use of, and to be disbursed by, a distinct organization—a local district within the county. But, on the other hand, it has been held that a school district has no proprietary right to the money to its credit in the county treasury, and hence cannot recover it from the county superintendent who has erroneously transferred it to other school funds of the county.<sup>88</sup>

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<sup>87</sup> Cal. Const., art xi, § 16; 1893 Stats. Cal. 272.

<sup>88</sup> Gridley School Dist. v. Stout (1901), 134 Cal. 592, 66 Pac. 785.